IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

CRP.No. 170 of 2007()

AGAINST THE ORDER DATED 16/01/2007 IN EP.83/04 IN OS.37/2002 of SUB COURT,THODUPUZHA

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REVN. PETITIONER: DECREE HOLDER

P.V.GEORGE, AGED 58,
S/O.VARGHESE, PALLIKUNNEL HOUSE,
EZHUMUTTOM KARA, KARIMANNOOR VILLAGE,
THODUPUZHA TALUK.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)

RESPONDENTS: JUDGMENT DEBTOR

RELEEFFA, W/O.FIROZKHAN,
ANTHEENATTU HOUSE, OLAMATTOM KARA,
THODUPUZHA.

BY ADV. SRI.T.KRISHNAN UNNI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.No: 170 OF 2007 A

Dated this the 30th May, 2007.

O R D E R

This revision petition is preferred against the order of the executing court in E.P.83/04 in O.S.37/02. As per the terms of compromise the suit was decreed and it is made clear in the decree that the suit is decreed in terms of the compromise. As per the terms of compromise the defendant had agreed to pay a sum of Rs.4 lakhs to the plaintiff and on the date of compromise Rs.1.5 lakhs had been received by the plaintiff from the defendant and it stipulates that the balance amount of Rs.2.5 lakhs be given within a period of 110 days from that date. It contains a default clause that if the amount of Rs.2.5 lakhs is not paid within the stipulated time of 110 days the plaintiff will be entitled to realise an amount of Rs.3,25,000/- with 12% interest from 1.7.2004 and the property will be a charge and the decree holder will be entitled to realise the amount through court. It is also stated in paragraph 4 of the compromise statement that the plaintiff will continue to be in possession of the ground portion and that he is also entitled to collect rent from the tenants. The decree also enables the defendant to get back the original of the document from the court. When the amount was not

paid in time the decree holder moved an application for realisation of Rs.3.25 lakhs with interest and costs by sale of the properties. To this the judgment debtor filed a counter contending that the plaintiff is not entitled to execute the decree and he was prepared to pay the amount and even he has issued a notice. The main contention raised by the judgment debtor is that the decree holder is duty bound to evict the tenants inducted by him in the building and to give vacant possession of the building to the judgment debtor when the balance amount due to him is paid. The executing court considered these objections and found that since the decree holder has not got vacant possession of the tenanted premises and handed over it to the defendant, refused to execute the decree and dismissed the application. It is against that decision the present C.R.P is preferred.

2. Heard counsel for both sides.

3. I have extracted the terms of compromise in extenso in the previous paragraphs. The sum and substance of the compromise is that the matter is settled for Rs.4 lakhs and an amount of Rs.1.5 lakhs is given on the date of compromise and there is a stipulation to pay the balance amount of Rs.2.5 lakhs within a period of 110 days failing

which the decree holder is entitled to realise the amount of Rs.3.25 lakhs with 12% interest from 1.7.2004 and it enables the plaintiff-decree holder to continue in possession and collect rent from the building occupied by the tenants. It enables also the defendant to get back the document on satisfaction of the decree from the court. Now what is canvassed before me is that until and unless the plaintiff-decree holder is handing over vacant possession of the premises after vacating the tenant to the defendant-judgment debtor there is non-compliance of terms of the decree and, therefore, the decree is not executable.

4. I have perused the compromise petition meticulously and thoroughly and I do not find any such clause in the compromise petition. The compromise petition only stipulates that the plaintiff can continue in possession of the premise and he can continue to receive the rent from the persons occupying as tenants.

5. Learned counsel for the decree holder also submits before me that as per the terms of the agreement to sell subsequent to the execution of the agreement, the previous tenants of the judgment debtor only executed fresh documents in favour of the plaintiff and they continued to be in possession and therefore, there was no chance or

possibility of writing or discussing anything about vacating tenants from the premises. When a matter is compromised and a decree is passed in terms of the compromise the court as well as the parties are bound by the compromise which forms part and parcel of the decree. Neither the court nor the parties can read into the agreement to have a different meaning for the compromise unless there is some doubt or confusion regarding the terms of the compromise. As far as this case is concerned, the terms of compromise are crystal clear and it does not give any room of doubt or suspicion regarding the executability of the decree. Therefore the finding of the executing court that the decree is unexecutable is devoid of merits and is liable to be interfered with. I find that the decree holder is entitled to realise a sum of Rs.3.25 lakhs as stipulated in paragraph 3 of the compromise petition and there is no bar for him to execute the decree because the tenants continued to occupy the premises. Therefore the order under challenge is set aside and the executing court is directed to restore the execution petition to file and proceed to dispose of the matter including the sale of the property in accordance with the provisions of the Civil Procedure Code. The executing court shall take expeditious

steps for completing the execution process and both parties are directed to appear before the executing court on 15.6.2007.

C.R.P is disposed of accordingly.

M.N.KRISHNAN
Judge

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